

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

LIONELL ELIJAH EPHRAIM,

Plaintiff,

v.

**CIVIL ACTION NO. 3:14-CV-73
(JUDGE GROH)**

UNITED STATES OF AMERICA,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the report and recommendation of United States Magistrate Judge John S. Kaull. Pursuant to Rule 2 of the Local Rules of Prisoner Litigation Procedure, this action was referred to Magistrate Judge Kaull for submission of a proposed report and recommendation. On July 29, 2014, Magistrate Judge Kaull entered his report and recommendation [Doc. 12]. In that filing, he recommended that Plaintiff's request to proceed without prepayment of filing fees should be denied and Plaintiff be ordered to pay the full filing fee.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150

(1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

In this case, objections to Magistrate Judge Kaull's report and recommendation were due within fourteen days after being served with a copy of the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. Plaintiff was served with the report and recommendation on July 31, 2014. To date, the parties have not filed any objections. Accordingly, this Court will review the report and recommendation for clear error.

On July 9, 2014, Plaintiff filed a complaint pursuant to the Federal Tort Claim Act. On July 28, 2014, he filed his complaint on the court-approved form, and he also filed a court-approved Motion for Leave to Proceed *in forma pauperis* together with a Prisoner Trust Account Report, ledger sheets, and a consent to collection of fees from his trust account. Plaintiff's ledger sheets and certified copy of his inmate account statement revealed that he had an account balance of \$1,554.19 as of July 15, 2014. Therefore, Magistrate Judge Kaull found he had sufficient funds to pay the \$400.00 filing fee. Accordingly, Magistrate Judge Kaull recommended that Plaintiff's request to proceed without prepayment of fees be denied and that Plaintiff be ordered to pay the full filing fee.

Upon careful review of the record, it is the opinion of this Court that Magistrate Judge Kaull did not clearly err and that the report and recommendation should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated therein. Further, it is noted

that on August 18, 2014 Plaintiff timely paid the \$400.00 filing fee.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* Petitioner by certified mail, return receipt requested, to his last known address as shown on the docket sheet.

DATED: August 19, 2014


GINA M. GROH
UNITED STATES DISTRICT JUDGE